



FLSA2006-25NA

December 1, 2006

Dear **Name***:

This is in response to your letters to Kristine Iverson, Assistant Secretary of Labor for Congressional and Intergovernmental Affairs, on behalf of your constituent, the assistant chief of a volunteer Fire Department in your state. Your constituent is concerned that, although state law may allow a volunteer fire department to employ its volunteers as part-time employees, the federal Fair Labor Standards Act (FLSA) does not permit an individual to provide both paid and volunteer services in the same capacity to the same public agency or other employer. The Wage and Hour Division (WHD) of the U.S. Department of Labor has been asked to reply to you, because it administers the FLSA for most employees.

The Fire Department advised my staff that it is a private, non-profit corporation with a board of directors chosen from the volunteer members. Although the FLSA contains no specific exclusion for private non-profit organizations, if the activities of an “enterprise” are not performed for a business purpose, it is generally not covered under section 3(r) of the FLSA.¹ *See* 29 U.S.C. § 203(r)(1). Thus, the FLSA’s enterprise coverage typically does not extend to the eleemosynary, religious, educational, or similar activities of a non-profit organization unless such activities are in substantial competition with other businesses. *See* Wage and Hour Opinion Letter [FLSA2005-8NA](#) (Sept. 2, 2005). Nevertheless, individual employees of non-profit organizations, including firefighters and rescue-emergency personnel, are covered under the FLSA if, in the performance of their duties, they are engaged in interstate commerce or in the production of goods or materials for interstate commerce. *See* 29 U.S.C. §§ 206(a), 207(a)(1). While your constituent’s letter does not specifically request input on individual coverage, a discussion of individual coverage under the FLSA is available at 29 C.F.R. Part 776. *See also* Field Operations Handbook § 11n01; Wage and Hour Opinion Letter [FLSA2004-15](#) (Oct.18, 2004) (noting that EMS personnel would appear to be engaged in interstate commerce). We also note that as a practical matter, the Wage and Hour Division does not assert that an employee who on isolated occasions spends an insubstantial amount of time performing covered work is individually covered under the FLSA. *See* [FLSA2005-8NA](#).

An employee of a religious, charitable, or non-profit organization who volunteers for such an organization in a capacity different from that in which the employee is employed is not considered engaged in compensable work under the FLSA. For example, office employees of a volunteer fire department may volunteer to provide fire-fighting services during off-duty hours as an act of charity. On the other hand, a regular office employee may not volunteer to perform similar office work arising from a special fund drive or other operations of the volunteer fire department. Thus, under the FLSA, individuals who are volunteer firefighters may not work

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

some shifts for pay and continue to work some shifts on a “volunteer” basis for the same employer. In such cases, the volunteer and paid work is in the same capacity, and all hours worked on all shifts are combined and compensable for FLSA purposes. *See* Wage and Hour Opinion Letters [FLSA2005-33](#) (Sept. 16, 2005) and [FLSA2004-15](#).

Your constituent seeks specific guidance on four questions regarding the interaction of the federal laws that we administer and the state laws administered by the North Carolina Department of Labor. We answer his questions in the order in which they were presented in his letter.

Q1: “Which regulation is a volunteer fire department required to meet, state or federal?”

A1: Federal and state laws operate independently, but employers nevertheless must pay employees in accordance with both federal and state laws. In other words, employers must comply with both federal and state law, ultimately requiring employers to meet the standards of whichever law affords the employee the greatest protection. *See* 29 U.S.C. § 218(a); 29 C.F.R. § 531.26. Additionally, the requirements under the FLSA may not be waived by an employee. *See Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697 (1945).

Q2: “If the federal regulation is violated, what is the penalty for non-compliance?”

A2: A two-year statute of limitations applies to the recovery of unpaid minimum and/or overtime wages, except in the case of a willful violation, in which case a 3-year statute applies. *See* 29 U.S.C. § 255(a). Under the FLSA, the WHD may resolve the issue of compliance and payment of back wages. In addition, the FLSA provides for the following:

- An employee may file suit to recover back wages, and an equal amount in liquidated damages, plus attorney’s fees and court costs. *See* 29 U.S.C. § 216(b).
- The Department of Labor may file suit on behalf of employees for back wages and an equal amount in liquidated damages. *See* 29 U.S.C. § 216(c).
- The Department may obtain a court injunction to restrain any person from violating the law, including unlawfully withholding proper minimum wage and overtime pay. *See* 29 U.S.C. § 217.
- Civil money penalties may be assessed for repeat and/or willful violations of the FLSA’s minimum wage or overtime requirements. *See* 29 U.S.C. § 216(e); 29 C.F.R. § 578.3.
- Employers who have willfully violated the law may face criminal penalties, including fines and imprisonment. *See* 29 U.S.C. § 216(a).

Q3: “Who has jurisdiction over the volunteer fire departments, pertaining to labor laws, in a county?”

A3: As noted earlier, federal and state laws operate independently. With regard to laws regulating wages and hours of work, the WHD enforces federal standards. In addition, state and/or local authorities may have jurisdiction to enforce their own rules.

Q4: “What steps need to be taken to have the federal laws amended?”

A4: Any change in the FLSA would require legislative action by the Congress.

We hope that you find the above information helpful in addressing the concerns raised by your constituent. If you have questions or need additional information, please do not hesitate to contact us again.

Sincerely,

Barbara R. Relford
Office of Enforcement Policy
Fair Labor Standards Team

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**